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Book Reviews

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BOOK REVIEWS

THE ART OF ADVOCACY: A Plea for the Renaissance of the Trial Lawyer.
Lloyd Paul Stryker. New York: Simon and Schuster, 1954. Pp. xiii, 306.

HOW TO WIN LAWSUITS BEFORE JURIES. Lewis W. Lake. New York: Prentice-Hall, Inc., 1954. Pp. xii, 303.

TRIAL TACTICS AND METHODS. Robert E. Keeton. New York: Prentice-Hall, Inc., 1954. Pp. xxiv, 438.

Three new books, representing three different approaches to the same subject matter, each emphasize the fact that only a relatively small portion of the practicing bar, whether from choice, inclination, or otherwise, can be said to be entitled to the accolade of Trial Lawyer, using that term with the meaning it possessed in the day when the courthouse scene dominated man's imagination and trial by jury formed the bulwark of law and justice. As times have changed, it has come to be no reflection on a lawyer that he has not specialized in the art of trying lawsuits unless, as does happen, he attempts a trial without study of the science underlying matters of proof and persuasion or when lacking in cognizance of the tricks, using that word in no unethical sense, of effective advocacy. These are not matters which schools, as such, can readily instill for they partake of practice in the concrete rather than with abstract theory; things to be learned, to a greater or lesser degree, as is true with the art of flying, *i.e.* by the "seat of the pants" method. If, from such "practice" courses as the novitiate may get, even those accented with reasonably realistic hypothetical cases, enough ready-cut witnesses, and well-planned film sequences, he can "get going," the rest is a matter of close personal study, the giving of alert attention, a flair for work in the courtroom, and persistent practice. The best that experienced trial men, even professors, can provide, then, is precept and example and the hope that, with this much guidance, the novitiate can begin to fly, even unstably, before he crashes too badly.

These remarks may be thought by some to decry against the publication, the utility of books such as these. That thought would be far from the reviewer's intent. Mr. Stryker's book, for example, speaking in the fiery, imaginative prose of an author who long ago learned to master words, would entertain even if it did not instruct. Despite some repetitious use of oft-told tales centering around the courtroom, this series of essays, wide in scope but tending to lack in detail, ranges over the job of the advocate from office consultation to argument on appeal. It is, as Judge Medina notes by way of introduction, an "exciting" book, one which may well

serve to stimulate others to arrest the decline that has come about in legal forensics or the art of persuasion. Naturally, the skill of the great trial lawyer shines through each of the thoughts expressed, but the book is especially valuable for its section on appellate advocacy, an area generally neglected in other works. Two concluding chapters deal with ideas which merit attention. One pleads for a divided bar, akin to but not identical with the English model, to insure the speedy and intelligent conduct of litigation. While sound in its argument, it is doubtful whether, in a predominantly individualized American legal profession, this thought will find root in other than stony soil. The closing chapter, stressing the ethics of advocacy, provides a stirring explanation of the basic premise which underlies Canon 5 of the Canons of Professional Ethics. That canon, designed to express the right of the lawyer to act in the defense of one accused of crime regardless of his personal opinion as to the guilt of the accused, needs more than passing emphasis.

Practical books, particularly those of the how-to-do type, tend to place emphasis on what to do and when to do it rather than the why for doing. For this reason, Mr. Lake's book, ranging over almost as wide a field as that covered by Mr. Stryker, tends to suffer by comparison. It lays out the job to be done with a style something like that to be found in a manual intended for the basic training of a recruit. It abounds in don't's as well as do's, for cautionary advice is needed in this field just as much as exhortation. One wonders a little, however, whether it should be necessary to remind a lawyer to avoid talking with hands in pockets or while slouched in a chair. If anything, judging by the length of its message with respect to cross-examination in contrast to the amount of space devoted to establishing the case in chief, the book seems more nearly designed to explain how to win, *i.e.* successfully defend, jury trials. It does, though, afford an excellent contrast to Stryker's book in two respects. It provides many illustrations, in question-and-answer form, of specific trial situations that are apt to arise, with comment upon the skill shown by the examiner or as to the objective sought to be accomplished. The fire of the one author, with suitable cross-indexing, can thereby become translated into the colder fact of the other. Mr. Lewis' book also helpfully supplies the meat, in the form of book lists, to elaborate on an idea expressed by but not original with Mr. Stryker that a "lawyer without history or literature" is little more than a mechanic.

After two successful trial lawyers had expounded on their professional secrets and techniques it would be thought that little could be left to be said by a mere law school professor. In a sense, there is nothing left and it would be easy to point out, paragraph by paragraph, wherein Professor Keeton's book duplicates at least the essence of the message of the other two.

It contains many of the same wise cautions, explains anew many of the same problems faced by the others, but differs largely from either, both in spirit and form. Here is a work which, while devised for students in practice courses, should excite lawyers also. With professorial detachment, it covers the field from the standpoint of both plaintiff and defendant with clarity and without imbalance. It gathers in such matters as the effect pleadings will have on the trial, the taking and use of depositions, the making of and basis for objections, even to the point of tabulating those most commonly made, and delves into pretrial discovery. It is replete with question-and-answer illustrations, both with regard to direct and cross-examination, and draws upon some eighty-odd varied hypothetical but genuine enough case situations to present the subject adequately. It is, as every professorial book should be, amply supplied with footnotes and references. In fact, except for some doubtful organization which puts the chapter on preparation for trial and the one on proceedings before trial at the end rather than at the front of the book, it is the weightiest of all three. Most significant, the book does not proceed on a how-to-do or on a philosophical basis but rather puts everything in a "should you" light with a discussion of both the pro and the con, leaving the reader to determine for himself whether, in a given trial, the one or the other should be followed.

The concluding paragraph for this review, perhaps innocently, perhaps otherwise, has been provided ready-made by Mr. Lewis. He finished up his treatise by saying: "Every book is an aid to knowledge. I have read good books and bad ones . . . but never have I read a book that did not help me in some way." Read any one or all three of these books; profitable help, even enjoyment, is to be found in each of them.

W. F. ZACHARIAS

LAW AND PRACTICE IN CHATTEL SECURED FARM CREDIT. Glenn R. Coates. Madison, Wisconsin: The University of Wisconsin Press, 1954. Pp. xi, 105.

Books on the subject of security for credit extended to farmers, as contrasted with those dealing with lending operations involving business men, are rare in character. Those which reveal the actual practices engaged in with reference to farm credit are even rarer. This study, therefore, while primarily concerned with law and practice in relation to farm credit in Wisconsin, should interest lawyers every where, not alone because it provides current forms and depicts ingenious methods devised to provide a degree of security nor for the explanation it affords for some apparently lax legal practices but also because it serves to sharpen up the point that, among laymen at least, the written word of a seeming "legal" document

may often prove to be more effective in fact than would be the case if it possessed a truly binding character.

Some of the problems noted by Mr. Coates stem from local peculiarities, such as the Wisconsin opposition to use of the "after-acquired" clause or to the survival there of the common law concept that nothing can be made the subject of a legal interest which is not already in existence. Others turn upon sharp contrasts which have been developed between statutory forms provided in Wisconsin for the foreclosure of security interests and those methods actually pursued on the basis of a wise but complaisant yielding on the part of local borrowers. His research in the field, supplementing his work among statutes and court decisions in the library, is not simply confined to law as it is. He notes, with respect to each of the topics covered, the probable impact which could result in the event Wisconsin should come to adopt the proposed Uniform Commercial Code. By so doing, he has provided an extremely valuable model for similar studies in other states, especially those where there is occasion to believe that legal ideas, often developed to cover abnormal situations, have worked poorly in normal ones. For these reasons, and others more obvious, Mr. Coates' book should receive attention from Illinois lawyers, whether they serve urban communities or rural areas.

PRINCIPLES OF AGENCY. Merton Ferson. Brooklyn: The Foundation Press, Inc., 1954. Pp. xx, 490.

This newest addition to the University Textbook Series, providing expansion upon a list of worth-while and up-to-date texts for law students, deals with a not uncomplicated subject in a penetrating fashion which should go a long way toward clearing up doubts and difficulties. It is directed at fundamental distinctions existing in the relation of master and servant from those which involve principals and agents, treating these distinctions in both the theoretical and practical sense. Regarding the subject as one of elemental importance, Professor Ferson does not disdain to use simple, but commonly recurring, illustrations to sharpen the points he seeks to make. At the same time, he overlooks no issue of significance in the treatment given to the subject. The stimulating contrast this book provides for those basic reasons which underlie the responsibility of masters as distinguished from those controlling cases concerning principals should alone be reason enough for its widespread acceptance. The completeness of the coverage afforded, as indicated by an outline of contents which is itself twelve pages long, provides further evidence of merit. The first-year student will, without doubt, welcome this sterling aid to his law study.

BAR ASSOCIATION ORGANIZATION AND ACTIVITIES. Glenn R. Winters. Ann Arbor, Michigan: American Judicature Society, 1954. Pp. xx, 243.

The subtitle for this recent addition to the published reports of the Survey of the Legal Profession, one which has been dedicated to the memory of the well-beloved former executive secretary of the Illinois State Bar Association, would indicate that it might be considered a publication of limited utility for it is declared to be a handbook for bar association officers. It is that without question, in fact it provides a most excellent guide to serve one who has recently attained office in such an association; but it is more, far more, than that alone. It could, more correctly, be said to be a synthesis of all current bar association practices and plans, from which lawyer members, non-members, even students and the general public, may learn of the organized steps which have been taken to help lawyers and the law meet those public obligations due to society at large.

While somewhat in the nature of a brief for the integrated bar movement, in which Mr. Winters, through his executive connections with the American Judicature Society, has been a forceful proponent, the book devotes much of its space, after the giving of due consideration to such matters as bar organization, membership, finances, office management, and the like, to the larger topics of legal education, legal service to all, ethics and grievance procedure, legislative activities, the promotion of efficient judicial administration, and public relations programs. These discussions, being matters of current concern, supply the up-to-date picture needed to supplement Roscoe Pound's earlier history of bar associations. "Picture," incidentally, is an entirely appropriate descriptive term to use for this book contains over fifty illustrations, diagrams, and charts revealing a fascinating record of bar association activity.

Just as law practice differs from other forms of employment, so bar associations, even the integrated kind, differ from labor unions and other similar organizations. If there be doubt about this, reference need only be made to the amount of energy expended each year by hundreds, even thousands, of lawyers with an unselfish interest in the cause, acting through their organized groups at the national, state, and local levels, in the formulation and discharge of an imposing program of constructive achievement. It is the merit of this book not only to acknowledge the existence of this fact but to demonstrate clearly those areas in which success has, thus far, been attained.

CASES AND MATERIALS ON CONSTITUTIONAL LAW, Fifth Edition. Walter F. Dodd. St. Paul, Minnesota: West Publishing Company, 1954. Pp. xxxix, 1438.

The occasion for the publication of the fifth edition of a casebook which made its first appearance in 1932 would appear to be little more than one designed to serve the purpose of including some six recent cases, decided since the fourth edition, within its covers and to add several others to the footnotes while, at the same time, providing for the making of certain deletions. The common factor, if any, controlling these deletions seems to have been that the material excised concerned relatively narrow holdings rather than being definitive of the broad general principles of constitutional law. The general organization follows closely upon that found in the earlier editions. In terms of content, the book first considers the place of written constitutions in law and government and the part judicial interpretation plays in the enforcement thereof. This groundwork is completed by a consideration of the doctrine of separation of powers and the relationship existing between the various governing bodies in the United States. The concluding part, about two-thirds of the book, is devoted to a study of problems arising in connection with specific constitutional provisions. The adoption of this newest edition of Professor Dodd's casebook would not, in any material respect, alter a course in Constitutional Law in which the fourth edition has been used as a vehicle of study. It will be found to be the same acceptable teaching tool as its predecessors.

THE POLITICAL PHILOSOPHY OF ARNOLD BRECHT. Edited by Morris D. Forkosch. New York: New School for Social Research, 1954. Pp. 178.

Following upon Dr. Brecht's completion of twenty years of service on the staff of the Graduate Faculty of the New School for Social Research, more as a gesture of admiration but with evident regret over the fact of his retirement from active teaching, the students of that school caused this small volume of selected essays from the pen of their mentor to be collected and published. By this production, they have done more than honor their preceptor; they have given wider distribution to the first systematic treatment of the doctrine of relativism to be found in modern political and legal philosophy. For the benefit of those who would wish to delve deeper into the author's views, an extended bibliography, as well as a biographical summary, has been provided.

Out of Arnold Brecht's political thinking has come a philosophy which offers a fair hope that scientific thought may yet be able to bridge the

generally accepted gulf between the "Is" of legal practice in modern times and the "Ought" of abstract justice, toward which men have been groping their way for generations. Admitting that the gap cannot be closed by the use of pure logic alone, and rejecting the idea that it will never be possible to attain true justice, the author offers enough suggestions to show how science may be used to bring fact and theory into more perfect alignment. To that end, he has worked over much of the material of the Twentieth Century writers, with valuable critical comments thereon. The gap between positivism and natural law, cause of much of the confusion in modern juristic writings, may well be narrowed after a consideration of the message contained in this book.

THE LAW OF LABOR RELATIONS. Ralph A. Newman. Buffalo, New York: Dennis & Co., Inc., 1953. Pp. viii, 310.

This modest work, despite its imposing title, differs to some extent from the conventional text-book on a topic of law in that it does not purport to delve into every root nor follow every branch of the subject but presupposes some familiarity on the part of the reader with the general field. It, therefore, concentrates on the job of providing a topical treatment of labor law through the medium of a discussion of the factual and legal elements of an imposing list of cases and board proceedings. So doing, it provides an excellent resume of the principal cases, offers a helpful integration of what might otherwise be a number of confusing decisions, draws attention to defects noted under the operation of labor statutes, and carefully points out those issues which may be said to be unsettled or over which the law is still marked by doubt. The balance of the book is composed of the text of controlling statutes, set out *haec verba*; a helpful blending of the provisions of the National Labor Relations Act with those changes made therein by the Labor-Management Relations Act of 1947; several forms of actual employer-employee agreements; and the customary tables.

One seeking a complete exposition on the subject from the historical, administrative, and procedural viewpoints might experience a sense of disappointment over the fact that the author has not seen fit to go into all possible ramifications. There is evidence that he has the skill and the ability to do an excellent job in that direction and may yet do so. Keeping his avowed purpose in mind, however, that of stimulating further study in a field which is, paradoxically speaking, both simple and complex, it can be said this book provides not only a degree of stimulation but also a challenge to those who feel the problems of management and labor are not matters to be thrust lightly aside.